



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 188-99

27 May 1999

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 1 April 1948 for three years at age 18. The record reflects that you were advanced to PFC (E-2) and served without incident for more than 12 months. However, during the 34 month period from April 1949 to February 1951, you received three nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of being out of uniform, missing quarters, and three instances of absence over leave totalling about seven days.

On 18 February 1951, you made a voluntary statement admitting to homosexual acts prior to and during service. You stated that you participated in homosexual acts with another Marine in your bunk at the barracks. You stated that an effort was not always made to conceal your actions, and you knew of others in the barracks who were participating in similar homosexual acts. You provided the investigating officer the names of other individuals

involved. PVT M, the individual with whom you committed homosexual acts, stated that on one occasion you told him that you were going to an empty room to masturbate. Later, you came back and said there was a ghost in the room. You jumped in the bunk with PVT M and said "M, protect me," or words to that effect. Then you hollered that you were in the bunk with PVT M and all the other Marines around you laughed as the both of you proceeded to play with each other

On 23 February 1951, you were seen for psychiatric consultation because you had superficially injured yourself with a fork. At the time, you appeared anxious and agitated. You admitted to two homosexual relationships and your anxiety reactions appeared abated. Thereafter, you agreed to accept an undesirable discharge for the good of the service in lieu of trial by general court-martial on two charges of indecent acts. Although the evidence of record indicates that the commanding officer recommended your discharge and the commanding general concurred, their letters are not on file in the record.

On 27 February 1951, you were convicted by a second summary court-martial of absence over leave for a period of 22 days. You were sentenced to forfeitures of \$45 pay per month for four months.

An undesirable discharge board convened in Headquarters, Marine Corps on 5 March 1951 and recommended that you be discharged by reason of homosexuality. The Commandant of the Marine Corps directed that you be separated with an undesirable discharge by reason of unfitness due to "habits and traits of character manifested by homosexuality." You were so discharged on 30 April 1951.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 48 years since you were discharged. The Board noted your contentions to the effect that you served 37 months on a 36 month enlistment and were misled by a lieutenant colonel (O-5) into believing that by accepting discharge you would receive a discharge similar to a general discharge. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs, two convictions by summary court-martial, and your admission to homosexual acts. In this regard, your homosexual conduct falls within at least one of the aggravating factors set forth in current regulations, specifically, committing a homosexual act openly and in public view. Since the barracks at that time was an open bay, and not private rooms, your homosexual acts were committed openly and in public view. Thus, even under current standards, discharge under other than honorable conditions would be appropriate in your

case. You have provided no evidence to show that you were misled into accepting discharge in lieu of trial by court-martial. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director